



Comptroller General
of the United States

Washington, D.C. 20548

12441710

Decision

Matter of: Commerce Land Title of San Antonio, Inc.--
Claim for Costs

File: B-249969.2

Date: October 11, 1994

Donald E. Barnhill, Esq., East & Barnhill, for the protester.
Michael J. Farley, Esq., and Kenneth A. Markison, Esq., Department of Housing and Urban Development, for the agency.
Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Claim for costs of filing and pursuing a successful protest, including reasonable attorneys' fees, is allowed where protester and its attorneys have provided sufficiently detailed documentation to support claim.
2. Claim for attorneys' fees charged protester for activities occurring in period after decision sustaining protest was issued is allowed where attorneys' fees are associated with analyzing and explaining decision to protester and with pursuing claim for protest costs.

DECISION

Commerce Land Title of San Antonio, Inc. (CLT) requests that we determine the amount it is entitled to recover from the Department of Housing and Urban Development (HUD) for filing and pursuing its prior protest.

In Commercial Land Title of San Antonio, Inc., B-249969, Dec. 8, 1992, 92-2 CPD ¶ 400, we sustained CLT's protest against HUD's invitation for bids No. 37-92-113, for real estate closing services. We held that the invitation unduly restricted competition because it required that all bidders be attorneys licensed to practice in the state of Texas. We recommended that HUD cancel the invitation for bids and resolicit the requirement using a solicitation that would allow title companies to bid providing that they could show that they would subcontract with licensed attorneys for any

services that had to be performed by a licensed attorney under Texas law. We also held that the protester was entitled to the costs of filing and pursuing the protest.

By letter of February 4, 1992, the protester filed its claim for costs with HUD seeking reimbursement of \$9,152.63. The agency determined that the actual, documented costs of filing and pursuing the protest were only \$6,619.65. Accordingly, HUD urges us to disallow a total of \$2,532.98 of the claimed protest expenses. Of this amount, the protester concedes \$259.91,¹ leaving \$2,273.07 still in dispute.

A protester seeking to recover the costs of pursuing its protest must submit sufficient evidence to support its monetary claim. The amount claimed may be recovered to the extent that the claim is adequately documented and is shown to be reasonable; a claim is reasonable, if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in pursuit of the protest. Data Based Decisions, Inc.--Claim for Costs, 69 Comp. Gen. 122 (1989), 89-2 CPD ¶ 538.

The agency cites our decision in Bush Painting, Inc.--Claim for Costs, B-239904.3, Aug. 16, 1991, 91-2 CPD ¶ 159, as requiring disallowance of significant portions of the claim. In Bush Painting, we resolved a dispute concerning the amount of bid preparation and protest costs to which Bush was entitled as a result of our Office having sustained its earlier bid protest of an Air Force procurement. Since Bush had not documented its claimed bid preparation costs, we allowed only the portion of those costs that the Air Force had offered to pay Bush. Regarding Bush's claim for the costs of filing and pursuing the protest, we performed a detailed analysis of the various aspects of the claim and determined Bush was entitled to \$1,758.75 of the total \$8,091.61 claimed. Basically, we allowed Bush to recover only costs that were both properly documented and reasonably related to various protest activities.

¹HUD objected to payment of \$254.59 for expenses such as reproduction of documents, computer research, postage, Federal Express, and long-distance service on the basis that the expenses were not described adequately nor shown to relate to the protest. HUD also found a \$5.32 mathematical error in CLT's claim for its employees' time. Together these expense items total \$259.91 of the claim which CLT withdraws.

HUD first argues that \$428.94 in claimed protest costs² should be disallowed because the costs were incurred after CLT filed its protest but before HUD filed its report with our Office. HUD also argues that \$130.95 in costs³ should be disallowed because the expenses were incurred after CLT filed its comments on HUD's protest report but before our Office issued the decision sustaining CLT's protest. HUD argues that under the holding of Bush Painting, any expenses incurred in the period between protest filing and receipt of the agency report and in the period between filing of comments and issuance of our decision are not considered costs of pursuing the protest and may not be paid as a matter of law.

In Bush Painting, we disallowed costs related to Bush's attempts to gather information about the procurement under the Freedom of Information Act or by other means and attorneys' fees incurred by Bush. We found that the information-gathering expenses were not necessary to or otherwise related to Bush's pursuit of the protest. We also examined the services that were provided Bush by its attorney, before determining that the information provided by the attorney was not related to the pursuit of the protest. The timing of the information-gathering activities and communications with the attorney was but one factor in our determination that those costs simply were not related to Bush's pursuit of its protest. We did not hold that the costs of pursuing a protest would not be compensable merely because they were incurred during certain time periods.

In the current case, unlike the protester in Bush Painting, CLT retained counsel to assist it in pursuing its protest from the outset. CLT and its attorneys have presented detailed supporting documentation showing that CLT and its counsel discussed the protest and reviewed protest-related correspondence on several occasions pending our resolution of the matter, and CLT's attorneys have certified that the attorneys' fees were billed to and are the responsibility of CLT. In addition, the record shows that CLT's consultations with its attorneys were not excessive in number and that the attorneys' fees charged were well within the hourly rates

²These expenses consist of the salaries of CLT's president/ chairman of the board and general counsel for time spent on telephone calls with the firm's attorneys; and for reviewing protest-related correspondence, as well as attorneys' fees for those telephone calls, reviewing protest correspondence, writing to CLT, etc.

³These costs represent the salary of CLT's president/ chairman of the board and attorneys' fees charged for time spent conferring on the telephone.

usually charged by lawyers in pursuing a bid protest. We think it is reasonable to expect that, after filing a protest, a protester will occasionally consult with its attorneys during all phases of the protest to discuss protest-related matters such as strategy, status, and calendar of events. See Bay Tankers, Inc.--Claim for Bid Protest Costs, B-238162.4, May 31, 1991, 91-1 CPD ¶ 524. While HUD objects to reimbursing CLT based upon the timing of the various expenses incurred, HUD does not argue that the expenses were unrelated to the protest or that the amount of the costs is unreasonable. In light of the documentation supporting CLT's claim for costs and attorneys' fees incurred in the period between protest filing and issuance of our decision, and because the costs appear reasonable in amount, we find the protester entitled to reimbursement of \$559.89 in protest costs.⁴

Next, HUD argues that \$1,555.80 of CLT's claim for costs⁵ should be disallowed because the costs were incurred after our decision on the protest was issued. The agency cites Bush Painting and Tripp, Scott, Conklin & Smith--Claim for Costs, 72 Comp. Gen. 232 (1993), 93-1 CPD ¶ 414, for the proposition that a protester may not recover any money expended after issuance of our decision. As pointed out above, Bush Painting does not bar payment of costs merely because they were incurred in a particular time period, but rather, the test to be applied is whether the costs were reasonably incurred in pursuit of the protest. In Bay Tankers, supra, we explicitly approved costs paid to a law firm to analyze, explain, and consult with the protester concerning our protest decision. In Tripp, Scott, Conklin & Smith, the protester was a law firm, and yet claimed costs associated with its own employees' time incurred after issuance of our decision on the protest; we found that those costs were not necessary to the pursuit of the protest. In the current case, CLT used independent counsel throughout the protest process, and we believe that the attorneys' fees

⁴This total represents \$428.94 in costs incurred after filing but before receipt of the agency's report and \$130.95 in costs incurred after commenting on the report but before our decision was issued.

⁵Part of these costs (totaling \$418.30) are the fees charged by CLT's attorneys for reviewing the protest decision and explaining it to CLT's president/chairman of the board, as well as time spent by CLT's president/chairman of the board conferring with the attorneys and reviewing information received from the attorneys concerning the decision. The greater part of these costs (totaling \$1,137.50) represents attorneys' fees charged for researching and pursuing this claim.

associated with analyzing and explaining the decision to the protester are legitimately incurred in pursuit of the protest and may be recovered. Since the costs are adequately documented and appear to be reasonable⁶ in amount, we find the protester entitled to reimbursement of an additional \$1,555.80.

HUD contends that \$157,38 of CLT's claim should be disallowed because there are four instances of telephone calls between CLT's president/chairman of the board and CLT's attorneys that are not listed both on CLT's and its attorneys' list of telephone calls. Even though CLT's itemization of telephone calls does not corroborate every telephone call listed by its attorneys, we have no reason to doubt that the telephone conferences were held. In view of the long lists of documented phone calls between CLT and its attorneys, the failure of one party to confirm every call listed by the other party is not, in itself, a bar to reimbursement. We believe that the protester is entitled to reimbursement of these costs.

In sum, CLT is entitled to recover a total of \$8,892.72 as the costs of pursuing both its protest costs and this claim for protest costs, as follows:

- \$6,619.65: The amount that HUD did not dispute.
- 428.94: Protest costs incurred after CLT filed its protest but before HUD filed its report.

'HUD also argues that CLT has claimed an unreasonable amount (\$650) in attorneys' fees for various activities related to pursuing this claim. Costs, including those associated with pursuing a claim for protest costs, are reasonable if, in their nature and amount, they do not exceed that which would be incurred by a prudent person in a similar pursuit. See Patio Pools of Sierra Vista, Inc.--Claim for Costs, 68 Comp. Gen. 383 (1989), 89-1 CPD ¶ 374; Federal Acquisition Regulation § 31.201-3(a). Here, CLT's attorneys spent 6 hours reviewing and summarizing protest costs, conferring with their client's employees regarding the statements that would be made in support of the claim, and presenting the claim to our Office, and have certified that the fees therefor were billed to CLT for payment; HUD has articulated no basis for asserting that the fees are excessive. See Data Based Decisions, Inc.--Claim for Costs, supra. Based upon our own examination of the claim, supporting documentation, and HUD's very detailed brief disputing many elements of the claim, we believe that the amount of attorneys' time spent was reasonable. Accordingly, these claimed attorneys' fees are allowed.

- 130.95: Protest costs incurred after CLT filed its comments but before our decision was issued.
- 418.30: Protest costs incurred after our decision was issued.
- 157.38: Cost of four telephone calls between CLT and its attorneys.
- 1,137.50: Attorneys' fees charged for researching and pursuing this claim.


Comptroller General
of the United States